

JAMES H. TURNER, TRUSTEE,
SARA ANN LAWRENCE TRUST

IBLA 79-62

Decided July 20, 1979

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting appellant's offer to lease for oil and gas. C 26953.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

When an offer for a noncompetitive oil and gas lease is submitted by the trustee of a discretionary trust and an offer for the same parcel is submitted by the beneficiary of that trust, a multiple filing has occurred contrary to 43 CFR 3112.5-2 (1978). The "agreement, scheme, or plan" specified by this regulation need not exist between the trustee and the beneficiary of the trust. A plan or agreement, such as the provisions of a trust, whose purpose is to benefit a third party is sufficient to come within the meaning of the regulation.

APPEARANCES: Roscoe Walker, Jr., Esq., Allen D. Voth, Esq., Gorsuch, Kirgis, Campbell, Walker, and Grover, Denver, Colorado, for appellant.

Lyle K. Rising, Esq., Office of the Solicitor, U.S. Department of the Interior, Denver, Colorado, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James H. Turner, Trustee of the Sara Ann Lawrence Trust, appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated October 10, 1978, rejecting his offer for a noncompetitive oil and gas lease.

In the June 1978 simultaneous drawing by the Colorado State Office, the drawing entry card (DEC) of James H. Turner, Trustee of

the Sara Ann Lawrence Trust, was selected first and given first priority for oil and gas rights to Parcel CO-351. In this same drawing, a DEC was also filed for Parcel CO-351 by Sara A. Lawrence, individually; this offer, however, was not selected.

In a letter dated July 24, 1978, to appellant, BLM inquired whether Sara A. Lawrence was the beneficiary of the Sara Ann Lawrence trust of which appellant was trustee. Attorneys for Turner acknowledged that Sara A. Lawrence was the beneficiary of the trust. Without further action on BLM's part, Turner appealed the July 24, 1978, request for information, anticipating BLM's rejection of his DEC. On September 22, 1978, this Board dismissed Turner's appeal without prejudice. IBLA 78-588. Thereafter on October 10, 1978, BLM rejected Turner's DEC filed as Trustee of the Sara Ann Lawrence Trust. This appeal followed.

BLM rejected Turner's DEC because it found that the filing of a DEC for Parcel CO-351 by Turner, as trustee for the Sara Ann Lawrence Trust, and the filing by Sara A. Lawrence, individually, for the same parcel constituted a multiple filing in violation of 43 CFR 3112.5-2 (1978). That regulation states:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected.

Appellant's statement of reasons on appeal disputes BLM's finding and contains the following arguments:

1. The trust agreement does not provide the beneficiary with any present title or interest in the lease or trust assets, nor is it certain that the beneficiary will ever acquire any such interest.
2. The relationship of James H. Turner, trustee, and Sara A. Lawrence, the individual and beneficiary, does not constitute the type of agreement contemplated by the regulations as giving greater probability of successfully obtaining a lease in BLM's drawing.
3. No agreement, scheme, or plan contemplated by the regulations exists between the trustee and the beneficiary.

4. The relationship existing between the trustee and beneficiary is similar, for purposes of construing the regulation, to the relationship existing between husband and wife.

5. The trustee-beneficiary relationship is distinguishable from the corporation-officer relationship.

The beneficiary, Sara Ann Lawrence, was born on February 25, 1959. The settlor of the trust at issue is her father, David F. Lawrence.

An understanding of the controlling terms of the trust is necessary to appreciate the positions taken by BLM and appellant:

(1) The trustee of the Sara Ann Lawrence trust may distribute at any time to Sara Ann, the beneficiary, such amount or amounts of net income or principal, or both, of the trust as he shall determine in his sole discretion.

(2) Commencing with her 21st birthday, all net income of the trust shall be paid to Sara Ann.

(3) The trustee shall distribute one half of the remaining trust principal and accumulated income to Sara Ann upon her attaining the age of 25 years.

(4) Sara Ann shall have the absolute and unrestricted right to terminate the trust by a writing received by the trustee not later than 60 days following her 21st birthday. If not terminated at this time, the trust shall terminate on the day on which Sara Ann attains the age of 30 years or dies, whichever shall first occur.

[1] The purpose of 43 CFR 3112.5-2 (1978), the regulation relied upon by BLM in its decision below, is to prohibit any person, association, corporation, or other entity from having a greater probability of successfully obtaining a lease, or interest therein, for a particular parcel in any single drawing. Although a party may submit DEC's for as many parcels as he desires, he may not submit more than one DEC for any one parcel. The issue posed by the present case is whether a multiple filing has occurred when DEC's are submitted for the same parcel by the trustee of a discretionary trust 1/ and by the beneficiary of that same trust. We hold that it has.

1/ Article 1-2.1 of the trust states:

"DISCRETIONARY INCOME AND PRINCIPAL DISTRIBUTIONS: Subject to the provisions of Article 1-2.2, the trustee may distribute to, or apply for the sole benefit of, Sara Ann at any time during the term of the trust, such amount or amounts of the net income or principal, or both, of the trust as the trustee in its sole discretion shall determine. Any income which the trustee determines not to use may be accumulated as income or added to trust principal."

The fact that legal title in the lease may be vested in the name of appellant as trustee for Sara Ann does not preclude our so holding. The regulation at issue prohibits a person from having a greater probability of successfully obtaining a lease, or interest therein. 43 CFR 3100.0-5(b) defines an "interest" in the following terms:

An "interest" in the lease includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such interests. Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues, or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any agreement or understanding existing at the time when the offer is filed, is deemed to constitute an "interest" in such lease.

Appellant maintains that the beneficiary of a trust takes no estate or interest in the property forming the trust corpus. For this proposition he cites In re Troy's Estate, 24 Cal. 53, 3 P.2d 930 (1931) and In re Hartwig's Estate, 119 Mont. 359, 175 P.2d 178 (1946). While this view has been taken by some courts, ^{2/} the United States Supreme Court has recognized on multiple occasions that the beneficiary of a trust takes a property interest in the trust corpus, albeit an equitable interest. Blair v. Commissioner of Internal Revenue, 300 U.S. 5 (1937); Senior v. Braden 295 U.S. 422 (1935); Bowen v. Chase, 94 U.S. 812 (1876);

A property interest in the trust corpus is also found by the Restatement (Second) of Trusts § 130 (1976) wherein it is stated:

§ 130. The Nature of the Beneficiary's Interest

Except as stated in § 131 [re equitable conversion],

(a) if the trust property is personal property, the interest of the beneficiary is personal property;

(b) if the trust property is real property, the interest of the beneficiary is real property unless the interest of the

fn. 1 (continued)

The discretionary character of the trust ceases, however, when Sara Ann turns 21 years of age; at that time, article 1-2.2 compels the trustee to distribute all net income of the trust to her.

^{2/} In Title Ins. and Trust Co. v. Duffill, 191 Cal. 629, 218 P. 14 (1923), the California Supreme Court took a position contrary to the Troy statement and California Civil Code § 863. In Duffill, the court found that the beneficiary of a trust took an equitable estate in the trust property established by a testamentary trust.

beneficiary is so limited in duration that if it were a legal interest it would be personal property.

Commenting upon the Court's decision in Senior v. Braden, supra, Professor Scott, the Reporter on Trusts for the American Law Institute, writes: "It is submitted that the view of the majority of the Supreme Court that the interest of the beneficiary of a trust in land is an interest in land is in accordance with sound principles of the law of trusts." 2 A. Scott, *The Law of Trusts* § 130, at 1059-60 (3d ed. 1967).

It is possible, as counsel for appellant points out, that the trustee could assign the lease prior to the beneficiary's enjoyment of any of the income therefrom. In such a case, however, the proceeds of such assignment would then become part of the trust corpus and be subject to the trust provisions. The fact that the beneficiary's interest has assumed a different shape after an assignment does not render the regulation at issue nugatory.

Without regard to the rather technical distinctions set forth above, it is undisputed that the beneficiary of a trust can maintain a suit in equity to compel the trustee to perform his duties as trustee. 3 A. Scott, supra, at § 199. Other remedies include injunction against a threatened breach of trust, redress for breach of trust, appointment of a receiver, and removal of the trustee. Id.

Hence, in the event that appellant failed to perform his duty as trustee, the beneficiary could presently maintain a suit in equity to compel him to perform that duty. If the lease for Parcel CO-351 were to issue to the trustee, Sara Ann could compel payment of the net income from such lease upon her 21st birthday or terminate the trust altogether within 60 days of that date and receive all the benefits of the lease. Within the life of the lease and upon her 25th birthday, she could compel the trustee to distribute one-half of the trust principal and accumulated income.

In determining the interest of Sara Ann in the subject trust, her financial interest in the trust cannot be overlooked. It is true that appellant could deny to Sara Ann any of the benefits of the trust until her 21st birthday. At the time of her filing an offer for parcel CO-351, Sara Ann was less than 2 years away from her 21st birthday. Upon her reaching 21, however, there can be no doubt that any distribution from the trust would benefit her directly, rather than her parents who may be providing support for her until that time. 3/

3/ We need not decide whether Sara Ann was a minor or an adult at the time of her filing an offer for Parcel CO-351.

Given the short period of time before her 21st birthday and the discretionary nature of the trust, ^{4/} it is probable that Sara Ann will participate in the benefits of the lease upon her 21st birthday. It is this probability of obtaining a lease, or interest therein, which is the essence of the regulation at issue.

To summarize, if a lease were to issue based upon the DEC submitted by appellant as trustee, Sara Ann's interest in the lease would be threefold:

1. An equitable interest in the trust corpus itself;
2. The right to enforce the trust if the trustee should fail to properly perform; and
3. The right to enjoy the benefits of the lease upon her 21st birthday.

Far from having no interest in the lease itself, Sara Ann, as beneficiary of the trust, has a considerable interest therein. Her participation in the trust is well within the meaning of the term "interest" as defined above in 43 CFR 3100.0-5(b). Her filing of a DEC in her own name, individually, therefore, gives her a greater probability of successfully obtaining a lease, or interest therein, contrary to the clear terms of the regulation. We hold, accordingly, that BLM properly rejected the offer submitted by appellant as trustee for Sara Ann.

Counsel for appellant point out that no agreement exists between the trustee and the beneficiary which would give either, or both, a greater probability of successfully obtaining a lease or interest therein. The simple answer to this is that the agreement need not exist between two persons who file for the parcel. A plan or agreement between two parties is sufficient whose purpose is to benefit a third party, as in the case at hand. The trust provisions of the Sara Ann Lawrence Trust constitute a sufficient "agreement, scheme, or plan" to come within the meaning of the regulation.

Our decision in the instant case is not inconsistent with prior Board decisions in this area. For example, in Farrell L. Lines, Trustee and Winston Trust, 40 IBLA 91 (1979), we held that a multiple filing had occurred when DEC's were submitted by the trustee of a minor and by the parent of that minor for the same parcel. And in Charles J. King, 40 IBLA 276 (1979), BLM rejected DEC's filed by the natural guardian of a minor and by a parent of that minor. We did not pass upon the multiple filing issue in King, because the DEC selected was flawed in other respects.

^{4/} The trust at issue here is a discretionary trust, and hence the trustee is neither limited nor compelled to distribute for the support and maintenance of the beneficiary.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

